No. 20,890

In the

United States Court of Appeals

For the Ninth Circuit

ELMER L. FARIS and ELAINE V. FARIS,
Appellants,

vs.

A. G. MADDOX, Commissioner of Revenue and Taxation, and GOVERNMENT OF GUAM,
Appellees.

APPELLANTS' OPENING BRIEF

On Appeal from the District Court of Guam

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

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INTRODUCTION

This appeal involves questions arising under the Guam Territorial income tax law (48 U.S.C.A. § 1421i, being a portion of the Organic Act of Guam, 64 Stat. 384 (1950), as amended). All references herein to sections of the Internal Revenue Code of 1954, as amended, will be dual references to both the Guam and United States income tax laws. Citations of regulations, unless specified to be of Guam origin, will be to regulations issued under the United States income tax laws.

"R" followed by a number will refer to a page in the printed Transcript of Record before this Court.

OPINION BELOW

The opinion of the District Court of Guam is not officially reported. The decision and opinion are contained in the memorandum opinion, appearing at R. 46.

JURISDICTION

This appeal is from a judgment adverse to appellants and taxpayers in an action filed in the District Court of Guam on September 30, 1965. In appellants' first count, appellants sought a redetermination of a deficiency assessment for the tax year ended December 31, 1961.

In the second count, appellants sought a refund of income taxes for the years ended December 31, 1960 and 1961.

The District Court of Guam has jurisdiction of the cause of action seeking redetermination of income taxes under § 19700 of the Government Code of Guam and 48 U.S.C.A. § 1424(a). The District Court of Guam has jurisdiction over the cause of action for a claim for refund of taxes alleged to be overpaid by virtue of the provisions of 48 U.S.C.A. § 1421i(h)(2). On February 14, 1966, appellants filed a notice of appeal in the District Court of Guam over the judgment filed herein on January 21, 1966, R. 17-18. Jurisdiction is conferred on this Court by 28 U.S.C.A. §§ 41, 1291 and 1294.

QUESTIONS INVOLVED

1. Is a wage earner who is a resident of California but derives salary for personal services rendered to a Guam corporation outside Guam to be taxed under the Guam income tax laws as a nonresident alien?

2. Assuming the foregoing question is answered in the affirmative, is his salary, to the extent it represents services performed outside of Guam, deemed income derived from

sources within Guam and, hence, in its entirety gross income taxable by the Government of Guam?

3. Upon the facts herein, is appellant entitled to allocate income received from a Guam corporation on a prorata basis; i.e., period of Guam service to the period of non-Guam service?

CODE SECTIONS, STATUTES, AND REGULATIONS INVOLVED

To the extent involved herein, all provisions of the Internal Revenue Code, the Organic Act of Guam, and pertinent United States regulations are set forth in Appendix A.

STATEMENT OF FACTS

Appellant Elmer L. Faris and his wife Elaine V. Faris were residents of California during the years 1960 and 1961, the periods of time in question. Mrs. Faris is a party because the original returns and claims for refunds filed herein for these periods of time were filed jointly and her name appeared thereon as a joint taxpayer. Her pertinency to the issues on appeal are limited to the foregoing statement. All singular references will be to the appellant Elmer L. Faris.

Appellant, prior to 1960, was engaged in the electrical contracting business in California. Prior to March 1958 appellant's electrical contracting company (Accurate Electric Company, Inc., a corporation) obtained a subcontract with Empire Gas and Engineering Company of Miami, Florida, to do certain electrical installation work on Guam. R. 38. In connection with the performance of that contract, appellant formed a Guam corporation called Accurate Electric Company (Guam), Inc. to which the electrical subcontract referred to above was assigned. Subsequent to the formation of the Guam corporation, the Guam corporation

engaged in the electrical contracting business on Guam generally as is borne out by the corporate Guam income tax returns for the years in question, R. 24 and schedule of jobs attached thereto at R. 29, and R. 31, and schedule of jobs attached thereto at R. 34.

During the two years in question, appellant performed services for the Guam corporation as general manager of its activities, including appraising, making bids, purchasing supplies, and the other aspects of a general electrical contracting business. (Deposition of Appellant, pp. 4-5.) For his services for 1960, he was paid $18,000.00 by the Guam corporation and filed a joint return and paid a tax thereon itemizing various deductions, including contributions, interest, and taxes. R. 20-21. For the year 1961, appellant was paid a total salary of $15,000.00 and also claimed certain deductions and exemptions as in the previous year. R. 22-23. At no time during these proceedings or otherwise have the salaries paid to appellant been questioned by appellees as excessive.

The 1961 deficiency, R. 43-45, arose as a result of a redetermination by appellee Commissioner that so far as Guam was concerned, appellant had a Guam tax status as a nonresident alien. Appellee Commissioner thereupon recomputed the tax for said year and asserted a resulting deficiency. In recomputing appellant's income, he allowed only one exemption, disallowed joint filing, and determined the tax on the full amount of $14,400.00, being the annual salary for that year, less $600.00. No allocation or proration of gross income and deductions was made in this recomputation. No deficiency was asserted for the year 1960, apparently because the statute of limitations barred it.

As to the claims for refunds for 1960 and 1961, appellant sought refunds of the total amounts paid on the basis that none of the income was taxable to Guam because appellant

spent negligible time in Guam and performed substantially all of the services for the Guam corporation in California. As an alternate ground, refund was also sought on the basis that if he was taxable as a nonresident alien, the gross income should have been allocated or prorated, based upon the amount of time spent in Guam.

The lower court disregarded the separate legal entity of the Guam corporation and appellant as a salaried officer and employee thereof, and further sustained the contention of appellees that appellant was properly taxable by appellees as a nonresident alien.

SPECIFICATION OF ERRORS RELIED ON

1. The District Court of Guam erred in finding that appellants controlled the Guam corporation on an alter ego basis and in thereby disregarding the existing separate legal entities.

2. The District Court of Guam erred in finding that any part of the salary in question paid to appellant was income from sources within Guam.

3. If a portion of said salary is income from sources within Guam, then the District Court of Guam erred in failing to allocate said income as to its source and determine taxable Guam income on the basis of such allocation.

SUMMARY OF ARGUMENT

There is no evidence to support the finding and determination by the trial court that the legal entity of the Guam corporation which paid appellant's salary should be disregarded. The only reason advanced by the trial court for disregarding the corporate nature of appellant's Guam business was that salaries paid to nonresident employees and officers would be able to escape the payment of Guam

taxes. This contention was never raised by appellees either before or after this action was instituted in Guam. There is no evidence in the record to sustain the finding that there was no business purpose existing for the formation and continuation of the Guam corporation or that such formation and operation was a mere sham or subterfuge.

Under 48 U.S.C.A. § 1421i(e), § 31, Organic Act of Guam, as amended by 72 Stat. 681 (1958), being designated the Guam Territorial income tax, "Guam" is ordinarily substituted for "United States" in the Internal Revenue Code of 1954, as amended. § 862 of said Internal Revenue Code provides that compensation for labor or personal services performed without the United States (Guam) constitutes gross income from sources without the United States (Guam). Under the Guam Territorial income tax law, appellant's salary was paid for services rendered outside of Guam with the exception of two ten-day trips, one in 1960 and one in 1961, constituting approximately 10% of the total services rendered to the Guam operation, and as such the entire amount of the salary should be excluded from Guam taxable income. If such income is deemed income partly from within Guam pursuant to the provisions of § 863(b) of said Internal Revenue Code, then the same should have been allocated as provided therein on the basis of length of service rendered in Guam to length of service rendered outside Guam.

ARGUMENT

I. There Is No Evidence Before the Trial Court to Sustain Its Finding That the Guam Corporation Should Be Disregarded as a Separate Legal Entity for Guam Income Tax Purposes.

Rule 52(a) of the Federal Rules of Civil Procedure permits a finding of fact to be set aside on appeal if the same is clearly erroneous. The finding with regard to the alter ego status of the Guam corporation substantially wholly

owned by appellants is unsupported by any evidence, testamentary or documentary. In fact, at no time during the proceedings, as well as the administrative proceedings prior to the institution of this action in the District Court of Guam, did appellees assert or contend that in computing appellants' taxes, the corporate structure should be disregarded. On the contrary, at all times appellees have recognized the validity of the corporate structure and collected corporate income taxes as may be seen from the record herein (R. 24 and R. 31, being the corporate income tax returns for the years in question).

Furthermore, where findings are based upon uncontradicted testimony, documentary evidence, or evidence by depositions, or by any combination of them, it has been held that findings of fact based thereon are subject to free review on appeal unaffected by the presumptions which ordinarily tend to uphold findings on controverted issues. *Carter Oil Co. v. McQuigg* (7th Cir., 1940), 112 F.2d 275.

The separate entity of a corporation can be disregarded in income tax situations but only when warranted by exceptional circumstances. In *Commissioner of Internal Revenue v. Eldridge* (9th Cir., 1935), 79 F.2d 629, 102 ALR 500, the Commissioner disregarded the separate entity of a corporation wholly owned by taxpayers and disallowed deductions for losses on sales of securities to taxpayers' wholly-owned corporation. The Court of Appeals held for the taxpayers and refused to disregard the corporate entity. The Board of Tax Appeals had earlier reversed the Commissioner and held that the taxpayers were entitled to the deduction and, in so doing, held that the corporation was an entity separate and distinct from the taxpayers. This holding was affirmed and the Court stated in its opinion, in part, as follows:

> "The correctness of this holding (the corporation was an entity separate and distinct from the tax-

payers) is challenged by the Commissioner, his contention being that the separate entity of the corporation should be disregarded, and the corporation and its stockholders treated as one.

"This is sometimes done in tax cases (citing cases), but only when warranted by exceptional circumstances. Generally, in tax cases, as in other cases, a corporation and its stockholders are to be treated as separate entities. (Citing cases.)

"The facts found by the Board of Tax Appeals in this case do not, in our opinion, warrant us in disregarding the separate entity of the corporation. The fact that respondents owned all its stock and were in complete control of it is no reason for disregarding its separate entity. (Citing cases.)

"It is argued by the Commissioner that the transfers by respondents to the corporation were made for the purpose of establishing a deductible loss for income tax purposes. This, if true, is unimportant. A taxpayer may resort to any legal method available to him to diminish the amount of his tax liability. (Citing cases.)"

Since neither the answer to the complaint (R. 6) filed by the appellees herein, nor the pretrial order (R. 9) made by the trial court, raised any issue of disregard of corporate entity, there is understandably no attempt by either side to meet this issue. However, an examination of the corporate tax returns shows that the corporation reported gross income for the tax year ended February 29, 1960, of $226,914.67; had a beginning inventory of $315,663.40; paid truck license fees in the amount of $569.82; paid a Vice-President compensation of $2,000.00; and in general, was actively engaged in the electrical contracting business in Guam (R. 24-30). The corporate tax return for the year ended February 28, 1961, indicates comparable business activity. Appellants contend, on the other hand, that the

record is totally devoid of evidence to indicate the corporation was merely a sham or subterfuge.

Finally, the trial court's finding on this issue and its obvious reliance thereon in its conclusions of law is unsupported by the judgment which was entered herein (R. 50). If the lower court were justified in its findings ignoring the corporate status of appellant's Guam corporation, then it should have redetermined the tax liability on the basis that the entity was a partnership or sole proprietorship and recomputed the tax liability accordingly. This was neither suggested by the trial court nor by the appellees.

II. The Court Below Erred in Holding That Appellant's Tax Status with the Government of Guam Is That of a Nonresident Alien.

The Internal Revenue Code of 1954, as amended, Subpart A of Part II (§§ 871-877), provides for a tax on nonresident aliens, with certain exceptions, of an amount equal to 30% of the gross taxable income derived from sources within the United States. Generally, the alien is only allowed a single exemption of $600.00; must itemize his deductions, which must be allocated to United States sources; and is not permitted to file a joint return. Under certain circumstances, this general scheme of taxation can be altered by tax treaties or conventions. § 894 I.R.C.

48 U.S.C.A. § 1421i(e), being a part of the Guam income tax law, requires substitutions of terms when the Internal Revenue Code is applied to Guam. Since there is nothing specific in either the Organic Act of Guam or any other statute applicable to Guam regarding the taxation of nonresidents of Guam, one must endeavor to ascertain the intent of Congress from a logical approach. The reports of Congress shed no light on this problem. Senate Report No. 2109, 81st Cong., 2nd Sess., 1950, and Senate Report No.

2176, 85th Cong., 2nd Sess., 1958. This logic may well be applied to the results of appellees' contentions as upheld by the trial court.

The principal reason for appellants urging here that a California resident and United States citizen is not an alien for purposes of the Guam income tax law is that the otherwise combined Guam, federal and California tax burden on the salary income derived from the Guam business would substantially exceed the applicable income tax rate either under the laws of Guam or the United States, together with applicable local income tax laws. It would seem plain that Congress did not intend nor want the Guam tax laws to be interpreted to reach this result.

The applicability of a state and federal tax credit (See § 901, I.R.C. and § 18001, Revenue and Taxation Code, State of California) is not an answer to double taxation as suggested by the trial court below in its memorandum opinion, R. 46 at 47-48, since in both instances the federal government, as well as the State of California, applies a limitation on the credit. § 904, I.R.C., provides that the credit shall not exceed the same proportion of the tax against which said credit is taken which the taxpayer's taxable income from sources within such country (or possession) but not in excess of the taxpayer's entire taxable income bears to his entire taxable income for the same taxable year. California's limitation is similar.

In summation, appellants' dilemma here lies in the fact that because of the existence of limitations on tax credits, they and others all similarly situated are in the position of paying greater total taxes on given income than they would be had this income been earned in or derived from a source other than Guam.

This result is attributed directly to the interpretation that a nonresident of Guam is to be taxed by the Government of Guam as an alien.

Under the mirror reading principal of § 31 of the Guam Organic Act (48 U.S.C.A. § 1421i(e)), there is no direction given as to the interchange of the word "alien". However, traditionally the term "alien" has to do with possession or lack of United States citizenship. It has no logical or ordinary application to the status of individuals vis-a-vis the territory of Guam. Hence, appellants contend that under 48 U.S.C.A. § 1421i(e) which permits the omission of inapplicable language, where necessary to effect the intent of the section, the appellees should (and can) tax only aliens (i.e. non-United States citizens) as aliens.

Nowhere in the Organic Act of Guam does the Congress speak or hint of a status of Guamanian citizens as distinguished from United States citizens. As a matter of fact, 48 U.S.C.A. § 1421*l* provides for the granting of United States citizenship to certain persons born in Guam and it appears clear that persons not becoming citizens by virtue hereof remain United States nationals or citizens of a country other than the United States.

As of the date of writing this brief, there is before this Court, having been submitted after oral argument, the case of *Atkins, Kroll (Guam), Ltd. v. Government of Guam,* No. 19,915, wherein a parallel question concerning the Guam income tax has been raised. In that case, the Government of Guam levied a withholding tax on dividends paid by a Guam corporation to its parent, a California corporation, at the 30% rate, under § 881 of the Internal Revenue Code, on the grounds as to Guam the California corporation is a foreign or alien corporation. The same reasons urged there for setting aside the Guam interpretation is urged here,

to-wit: the interpretation is not consistent with Congressional intent not to tax off-island taxpayers in a discriminatory and unfair manner. Appellants do not, by institution of this action, seek to gain a tax position of paying less total taxes by virtue of Guam operations, but merely to attain the same tax liability on all income taxes, Guam, federal and California, that they would have if this income were wholly earned within the United States. The Guam position with regard to appellant's tax status is rendered more onerous when one considers that the Guam tax rates are the same as the federal rates and that the state and federal tax credits are often partial ones.

III. Under the Internal Revenue Code of 1954, Compensation for Personal Services Rendered Outside the United States Is Not Considered Income Derived from Sources Within the United States and, Therefore, Not Taxable Income.

Applying the so-called "mirror-reading" principle as enunciated by 48 U.S.C.A. § 1421i(e), § 31, the Organic Act of Guam, as amended, it seems further abundantly clear that compensation paid to a nonresident employee by a Guam taxpayer for services rendered outside Guam is not Guam taxable income.

Appellant Elmer L. Faris testified in his deposition that during the years in question he was engaged full time in the electrical contracting business and that of this time, 40% was devoted to the Guam operation. He further testified that he spent less than ten days in Guam in 1960 and a like amount in 1961. (Deposition of appellant, p. 5.) Based on an average of 260 working days per year, 40% would amount to approximately 104 days devoted to the Guam business, of which ten days were spent physically present in Guam. On this basis, it can easily be computed that approximately 10% of the salary earned during each of the years was paid for services rendered by appellant while physically present in Guam.

On the basis of this evidence, the court would have been justified in finding that the income earned by appellant herein was income partly from within and partly from without Guam, as the same is defined in § 863(b) of the Internal Revenue Code of 1954, as amended. This section requires an apportionment under a process or formula of general apportionment prescribed by the Secretary or his delegate. Under the Guam income tax law, the Governor of Guam is empowered to make needful and interpretive rules and regulations (48 U.S.C.A. § 1421i(d)(2)). Regulation § 1.861-4(b) provides in part as follows:

> "If no accurate allocation or segregation of compensation for labor or personal services performed in the United States can be made, or when such labor or service is performed partly within and partly without the United States, the amount to be included in the gross income shall be determined by an apportionment on the time basis; that is, there shall be included in the gross income an amount which bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the payment is made."

No comparable regulation under § 863(b) of the Guam Territorial income tax law has been promulgated by the Governor of Guam. However, in the absence of such a regulation, it would seem reasonable to conclude that where the precise problem presents itself to the District Court of Guam, and in the absence of any reason not to apply the same, such method or basis of apportionment pursuant to the plain statutory language would be indicated. The trial court below, however, rejected the contentions of appellants that there should be apportionment and concluded, in

essence, that to rule in any other fashion than the manner in which it did would deprive the Government of Guam of valuable taxes.

While the motivation of securing the payment of all just and legal taxes to the Government of Guam is laudable, in the absence of statutory authority for the collection of taxes, the motivation is unsupportable.

CONCLUSION

There is no evidence to sustain a finding by the District Court of Guam that the Guam corporation, through and by which appellant conducted an electrical contracting business in Guam, was a mere sham and subterfuge. Since appellants are United States citizens, they should not be taxed under the Guam income tax law at the same rate that the United States Government taxes aliens who are not residents of the United States. Salary paid to appellant as salary for services rendered to the Guam corporation outside of Guam is not income derived from sources within Guam and hence not taxable to a nonresident thereof. There is no express or implied intention of Congress to authorize the Government of Guam to impose a different rate of tax on nonresidents than residents. In fact, the reasonable and fair implication of the intent of Congress is to treat all taxpayers of Guam who are United States citizens equally and fairly. If the salary paid to appellant for services rendered while physically present in Guam should be deemed income derived from sources within Guam, then an allocation of income should be made on the basis of time spent in Guam to time spent outside Guam.

It is, therefore, respectfully urged that this Court should reverse the decision of the District Court of Guam and direct that judgment be entered in favor of appellants in

the court below on all counts. If this Court is of the view that the salary should be allocated, then it is respectfully urged that the decision be reversed and remanded for further proceedings in accordance with the opinion and decision of this Court.

Dated: August 12, 1966.

Respectfully submitted,

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CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

WALTER S. FERENZ

(Appendix Follows)

Appendix

STATUTES AND CODE SECTIONS

Organic Act of Guam

§ 1421i. Income tax.

(a) Applicability of Federal laws.

The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam.

(b) Guam Territorial income tax.

The income-tax laws in force in Guam pursuant to subsection (a) of this section shall be deemed to impose a separate Territorial income tax, payable to the government of Guam, which tax is designated the "Guam Territorial income tax".

(c) Enforcement of tax.

The administration and enforcement of the Guam Territorial income tax shall be performed by or under the supervision of the Governor. Any function needful to the administration and enforcement of the income-tax laws in force in Guam pursuant to subsection (a) of this section shall be performed by any officer or employee of the government of Guam duly authorized by the Governor (either directly, or indirectly by one or more redelegations of authority) to perform such function.

(d) Definition of "income-tax laws"; administration and enforcement; rules and regulations.

(1) The income-tax laws in force in Guam pursuant to subsection (a) of this section include but are not limited to the following provisions of the Internal Revenue Code of 1954, where not manifestly inapplicable or incompatible

with the intent of this section: Subtile A (not including chapter 2 and section 931); chapters 24 and 25 of subtitle C, with reference to the collection of income tax at source on wages; and all provisions of subtitle F which apply to the income tax, including provisions as to crimes, other offenses, and forfeitures contained in chapter 75. For the period after 1950 and prior to the effective date of the repeal of any provision of the Internal Revenue Code of 1939 which corresponds to one or more of those provisions of the Internal Revenue Code of 1954 which are included in the income-tax laws in force in Guam pursuant to subsection (a) of this section, such income-tax laws include but are not limited to such provisions of the Internal Revenue Code of 1939.

(2) The Governor or his delegate shall have the same administrative and enforcement powers and remedies with regard to the Guam Territorial income tax as the Secretary of the Treasury, and other United States officials of the executive branch, have with respect to the United States income tax. Needful rules and regulations for enforcement of the Guam Territorial income tax shall be prescribed by the Governor. The Governor or his delegate shall have authority to issue, from time to time, in whole or in part, the text of the income-tax laws in force in Guam pursuant to subsection (a) of this section.

(e) Substitution of terms.

In applying as the Guam Territorial income tax the income-tax laws in force in Guam pursuant to subsection (a) of this section, except where it is manifestly otherwise required, the applicable provisions of the Internal Revenue Codes of 1954 and 1939, shall be read so as to substitute "Guam" for "United States", "Governor or his delegate"

for "Secretary or his delegate", "Governor or his delegate" for "Commissioner of Internal Revenue" and "Collector of Internal Revenue", "District Court of Guam" for "district court" and with other changes in nomenclature and other language, including the omission of inapplicable language, where necessary to effect the intent of this section.

* * * * * * *

(h) Jurisdiction of District Court; suits for recovery or collection of taxes; payment of judgment.

(1) Notwithstanding any provision of section 1424 of this title or any other provision of law to the contrary, the District Court of Guam shall have exclusive original jurisdiction over all judicial proceedings in Guam, both criminal and civil, regardless of the degree of the offense or of the amount involved, with respect to the Guam Territorial income tax.

(2) Suits for the recovery of any Guam Territorial income tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, under the income-tax laws in force in Guam, pursuant to subsection (a) of this section, may, regardless of the amount of claim, be maintained against the government of Guam subject to the same statutory requirements as are applicable to suits for the recovery of such amounts maintained against the United States in the United States district courts with respect to the United States income tax. When any judgment against the government of Guam under this paragraph has become final, the Governor shall order the payment of such judgments out of any unencumbered funds in the treasury of Guam.

* * * * * * *

§ 1421i. Citizens by birth in Guam on and after April 11, 1899.

(a) The following persons, and their children born after April 11, 1899, are declared to be citizens of the United States, if they are residing on August 1, 1950 on the island of Guam or other territory over which the United States exercises rights of sovereignty:

(1) All inhabitants of the island of Guam on April 11, 1899, including those temporarily absent from the island on that date, who were Spanish subjects, who after that date continued to reside in Guam or other territory over which the United States exercises sovereignty, and who have taken no affirmative steps to preserve or acquire foreign nationality.

(2) All persons born in the island of Guam who resided in Guam on April 11, 1899, including those temporarily absent from the island on that date, who after that date continued to reside in Guam or other territory over which the United States exercises sovereignty, and who have taken no affirmative steps to preserve or acquire foreign nationality.

(b) All persons born in the island of Guam on or after April 11, 1899 (whether before or after August 1, 1950) subject to the jurisdiction of the United States, are declared to be citizens of the United States; Provided, That in the case of any person born before August 1, 1950, he has taken no affirmative steps to preserve or acquire foreign nationality.

(c) Any person hereinbefore described who is a citizen or national of a country other than the United States and desires to retain his present political status shall make, within two years of August 1, 1950, a declaration under oath of such desire, said declaration to be in form and

executed in the manner prescribed by regulations. From and after the making of such a declaration any such person shall be held not to be a national of the United States by virtue of this chapter.

(d) The Commisioner of Immigration and Naturalization, with the approval of the Attorney General, is authorized and empowered to make and prescribe such rules and regulations not in conflict with this chapter as he may deem necessary and proper.

(e) Section 804(c) of Title 8 shall not apply to persons who acquired citizenship under this section. Aug. 1, 1950, c. 512, § 4(a), 64 Stat. 384.

Internal Revenue Code of 1954

§ 862. Income from sources without the United States.

(a) Gross income from sources without United States.—The following items of gross income shall be treated as income from sources without the United States:

(1) interest other than that derived from sources within the United States as provided in section 861(a)(1);

(2) dividends other than those derived from sources within the United States as provided in section 861(a)(2);

(3) compensation for labor or personal services performed without the United States;

(4) rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like properties;

(5) gains, profits, and income from the sale of real property located without the United States; and

(6) gains, profits, and income derived from the purchase of personal property within the United States and its sale without the United States.

(b) Taxable income from sources without United States. —From the items of gross income specified in subsection (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as taxable income from sources without the United States.

§ 863. Items not specified in section 861 or 862.

* * * * * * *

(b) Income partly from within and partly from without the United States.—In the case of gross income derived from sources partly within and partly without the United States, the taxable income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income; and the portion of such taxable income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Secretary or his delegate. Gains, profits and income—

(1) from transportation or other services rendered partly within and partly without the United States,

(2) from the sale of personal property produced (in whole or in part) by the taxpayer within and sold without the United States, or produced (in whole or in part) by the taxpayer without and sold within the United States, or

(3) derived from the purchase of personal property within a possession of the United States and its sale within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States.

Sec. 901. Taxes of Foreign Countries and of Possessions of United States.

(a) ALLOWANCE OF CREDIT.—If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the applicable limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against the tax imposed by section 531 (relating to the tax on accumulated earnings), against the additional tax imposed for the taxable years under section 1333 (relating to war loss recoveries), or against the personal holding company tax imposed by section 541.

(b) AMOUNT ALLOWED.—Subject to the applicable limitation of section 904, the following amounts shall be allowed as the credit under subsection (a):

(1) CITIZENS AND DOMESTIC CORPORATIONS.—In the case of a citizen of the United States and of a domestic corporation, the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

* * * * * * *

Sec. 904. Limitation on Credit.

(a) ALTERNATIVE LIMITATIONS.—

(1) PER-COUNTRY LIMITATION.—In the case of any taxpayer who does not elect the limitation provided by paragraph (2), the amount of the credit in respect of the tax paid or accrued to any foreign country or possession of the United States shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources within such country or possession (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(2) OVERALL LIMITATION.—In the case of any taxpayer who elects the limitation provided by this paragraph, the total amount of the credit in respect of taxes paid or accrued to all foreign countries and possessions of the United States shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

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Treasury Regulations

§ 1.861-4 Compensation for labor or personal services.

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(b) Amount includible in gross income. If a specific amount is paid for labor or personal services performed in the United States, that amount (if income from sources within the United States) shall be included in the gross income. If no accurate allocation or segregation of compensation for labor or personal services performed in the United States can be made, or when such labor or service

is performed partly within and partly without the United States, the amount to be included in the gross income shall be determined by an apportionment on the time basis; that is, there shall be included in the gross income an amount which bears the same relation to the total compensation as the number of days of performance of the labor or services within the United States bears to the total number of days of performance of labor or services for which the payment is made.

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